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OGC Has Reviewed

15 February 1955

Memorandum for: Deputy Director (Administration)

Subject : Individual Claims Against the Agency

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1. Reference is made to your buck slip of 23 November 1954 addressed to [redacted] enclosing therewith a memorandum from the Inspector General to the Deputy Director (Administration), same subject as above, and a suggested draft of a procedure for assuring complete staffing of Agency problems involving discretionary action. This office has intentionally delayed responding to the matters herein concerned until such time as two cases involving applications for discretionary relief were ruled upon. We have, as of this date, released our opinion on the Hawaii situation as it pertains to seven employees and [redacted]. We have also responded to a memorandum from the Inspector General concerning legal standards relevant to Inspector General cases. All of these memoranda are generally concerned with the same problem, to wit, an alleged mistake or error on the part of Government representatives, causing loss or injury to other officers, employees, or agents and presenting a suitable case for discretionary relief.

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2. In order to achieve what we hope is a better understanding of the concept of "rights" as it exists in Federal employment, we are also forwarding a copy of a memorandum to the Inspector General on that subject. We believe that further discussions using these various papers as a basis of discussion will contribute to enlightenment on the part of all components.

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3. With respect to the suggested procedures involving discretionary action, we are keying our comments to the corresponding paragraphs of [redacted] draft of 17 November 1954.

I Discussion of Facts and Principles

1. Agreed.

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2. The "substantive benefits to which employees are by right entitled" is not to be equated to the rights possessed by an ordinary citizen in the pursuit of his personal freedoms. As we have indicated in a separate memorandum addressed to the Inspector General, the extension of the term does not correspond to rights as it is generally applied to the ordinary citizen. The privilege of Federal employment involves a diminution of rights and an acquiescence to regulatory and supervisory control not characteristic of private employment. We have made specific reference to this encroachment in our paper to you.

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3. An administrative component can rule only on the basis of the facts before it. If extrinsic circumstances exist which would serve to convert an apparently normal administrative situation to a unique or operational situation, we believe current regulations provide adequate facilities for relief and may be resolved regardless of the administrative components entrusted with the application of general standards.

4. Same comments as in paragraph 3 above.

5. Agreed.

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6. If the DD/A position on such a matter is based on a non-operational situation or a point of law alone, it would seem that a determination not to grant discretionary relief should have the characteristics of administrative finality.

7. Agreed subject to the observation made in paragraph 6 hereof.

8. If there is a unique or operational variation, there is basis for departure from administrative standards of general applicability. The mere utilization of administrative standards in the conduct of operational activities, however, does not necessarily clothe the administrative standards with operational attributes.

9. Agreed.

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10. [redacted] stipulated that the concepts referred to in this paragraph should be deferred to a future date.

## II Procedures

1. Agreed.

2. Agreed.

3. More refusal by the Inspector General or the aggrieved employee to accept a DD/A determination denying discretionary relief generates an automatic appeal to the DCI through the IG for determination of final action. There may be occasions for the use of an appellate procedure to the DCI, a kind of super-equity situation. However, as a matter of procedure, I believe the DD/A determination should be received as administratively final subject to, perhaps, further conferences between the DD/A and the IG.

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Assistant General Counsel

Attachment

OGC:JBK:cst

cc: Inspector General (2)

OGC Subject✓

Signer

Chrono

